

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Further Forbearance From)
Title II for Certain Types of)
Commercial Mobile Radio Services)
Providers)

GN Docket No. 94-33

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COMMENTS OF ONECOMM CORPORATION

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SUMMARY

Existing market conditions within the nondominant Special Mobile Radio ("SMR") industry justify differential regulatory treatment for SMR service providers as the Commission applies various sections of Title II of the Communications Act to Commercial Mobile Radio Services ("CMRS") providers. SMRs have higher marketing and equipment costs, and less available spectrum than cellular carriers have. SMR spectrum also is not contiguous and is interspersed among various private radio allocations. Industrywide less than a third of SMR units are interconnected with the public switched network, as opposed to all cellular calls. SMR equipment for 800 MHz and 900 MHz services is not yet interoperable.

Although OneComm questions whether any of the Title II provisions at issue in this proceeding should be applied to SMR providers, particularly smaller SMR providers, it is primarily concerned about the application of two provisions. First, the application of Section 225 (Telecommunications Services for Hearing Impaired and Speech Impaired) to smaller SMR providers that offer almost exclusively dispatch services may create more costs than benefits. It is highly unlikely that a need for TRS services will arise in a

dispatch environment where most calls are not interconnected to the public switched network and are sent simultaneously from one person to many other people.

In addition, OneComm contends that it is premature for the Commission to apply the provisions of Section 226 of the Act (Telephone Operator Consumer Services Improvement Act--TOCSIA) to SMR providers. SMR operators historically have not offered operator services or aggregator services and they have no track record in this service area. SMR providers should not be subject to the onerous requirements of TOSCIA, including tariff filing requirements, when there is no evidence that they have engaged in the same kind of anticompetitive practices that triggered the legislation in the first instance.

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COMMENTS OF ONECOMM CORPORATION

OneComm Corporation ("OneComm") submits these comments in accordance with Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") rules, 47 C.F.R. §1.415, in response to the Notice of Proposed Rulemaking ("NPRM") adopted by the Commission in the above-captioned proceeding on April 20, 1994.

OneComm¹ is a leading provider of integrated wireless communications services in the United States. Following completion of certain previously announced acquisitions of Special Mobile Radio ("SMR") stations, its operating territory should encompass 54 million people in a

1 OneComm, formerly CenCall Communications Corp., was established in 1989 and completed an initial public offering of shares in 1993. On May 26, 1994, the company received shareholder approval to change its name formally from CenCall to OneComm Corporation.

23-state service area, including 10 of the top 30 metropolitan areas of the country.

OneComm's comments will focus on (1) an approach to further forbearance for certain SMR providers and services; (2) the application of operator services requirements to certain SMR providers and services; and (3) the application of telecommunication relay service obligations to certain SMR providers and services.

BACKGROUND

Congress has authorized the FCC to forbear from applying most provisions of Title II of the Communications Act (the "Act") to Commercial Mobile Radio Services ("CMRS") providers or CMRS services if a three-pronged test is met.² In an earlier order³ the Commission decided to forbear from applying Sections 203, 204, 205, 211, 212 and 214 of the Act to all CMRS providers and services.

The Commission declined, however, generally to forbear from applying certain consumer protection measures to all CMRS providers.⁴ The Commission also did not forbear

2 Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Sec. 6002(b)(2)(A), 6002 (b)(2)(B), 107 Stat. 312, 392 (1993) ("Budget Act").

3 Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 74 Rad. Reg. 2d (P&F) 835, March 7, 1994 ("Second Report and Order").

4 Specifically, the Commission decided to apply Sections 223, 225, 226, 227, and 228 of the Act.

from applying several other provisions that it characterized as primarily reservations of authority.⁵ In this proceeding the Commission addresses, among other issues, whether it should forbear from applying these Sections of Title II to only certain CMRS providers or services.

ARGUMENT

THE COMMISSION SHOULD GRANT CERTAIN SMR PROVIDERS ADDITIONAL FLEXIBILITY UNDER TITLE II

Congress has accorded the Commission a measure of flexibility to distinguish among the categories of CMRS providers and services that are subject to Title II provisions. The Budget Act's legislative history demonstrates that the regulatory parity provisions of Section 332(c)(1) of the Act recognize that "market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services."⁶

OneComm contends that market conditions, among other factors, within the SMR Industry justify differential regulatory treatment for at least some SMR providers and services under the Title II provisions at issue in this proceeding. In fact, the Commission already has before it compelling evidence sufficient to justify different

⁵ Those additional provisions are Sections 213, 215, 218, 219 and 220 of the Act; see also NPRM at ¶ 11.

⁶ See H.R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess. 491 (1993) ("Conference Report").

regulatory treatment. This evidence demonstrates that application of these provisions to smaller SMR providers is (1) unnecessary to ensure rates and regulations that are just and reasonable and not unjustly discriminatory; (2) unnecessary to protect consumers; and (3) consistent with the public interest.⁷

First, it is unchallenged that all SMRs are nondominant service providers and that their share of the wireless communications market is small, at least in comparison with cellular providers. At the end of 1993, 1.5 million SMR units were in operation in the U.S., but only 425,000 of them were interconnected with the public switched network. This compares with some 13 million cellular units in the U.S. market at the same time.⁸

The market conditions under which SMR providers compete also are significantly different from cellular providers. SMRs operate in 14 MHz of spectrum at the 800 MHz range of the radio spectrum and in 5 MHz at the 900 MHz range. Cellular carriers are allocated 50 MHz of contiguous spectrum. SMR's spectrum allocations are not contiguous and SMR radios are not interoperable at both 800 and 900 MHz.⁹

7 See 47 U.S.C. § 332 (c) (1) (A) .

8 See Second Report and Order at ¶ 142, n.294.

9 See OneComm Comments, filed June 20, 1994 in GN Docket No. 93-252.

In addition, SMR costs for marketing and subscriber equipment are higher than those of the cellular carriers.¹⁰ In the Second Report and Order the Commission did not find these facts sufficiently compelling to require differential Title II treatment for SMR providers as a whole. OneComm contends, however, that when these facts are considered with respect to certain services and smaller SMR providers, a cost/benefit analysis supports a different finding.

A majority of existing SMR providers offer traditional full power systems with no hand-off capabilities that serve small coverage areas compared to other CMRS providers. Although these providers may interconnect some calls to the public switched network, the vast majority of their offerings include noninterconnected dispatch communications. SMR operators that are constructing digital, wide-area, low power systems also continue to offer traditional high power SMR services.¹¹ SMR providers, nonetheless, are classified as CMRS providers if there is **any** offering of interconnected service.¹² As noted above, however, this classification does not require the same

10 See Second Report and Order at ¶ 143.

11 OneComm recognizes that a sharp demarcation between wide-area and traditional SMR providers may not be easily made.

12 See Second Report and Order at ¶ 92.

regulatory treatment for all service providers or services falling within its definitional boundaries.

Although a cost/benefit analysis permits the Commission to forbear from applying all Title II provisions at issue in this proceeding to traditional SMR providers, OneComm believes that the imposition of some Title II provisions of the Act would be more onerous than others. OneComm, for example, is less concerned with the Commission's decision to continue to apply Sections 213, 215, 218, 219 and 220 of the Act to all CMRS providers since it also decided not take immediate action to exercise its authority under these provisions. As the Commission notes, these provisions do not impose affirmative obligations upon CMRS providers and could not do so without a further rulemaking.¹³

OneComm, however, would object strenuously to the imposition on **any** SMR provider of annual reporting requirements and to the prescription of the format for its accounts and records. As a nondominant competitor, OneComm would object particularly to FCC prescription of its depreciation rates. Given the higher marketing and equipment costs that SMR providers incur vis-a-vis cellular providers, the imposition of additional regulatory costs would negatively impact SMR providers' competitive position

¹³ See NPRM at ¶ 11.

against cellular carriers. In light of the highly competitive nature of the CMRS marketplace, the needless addition of costs to emerging and nondominant service provider offerings neither protects the consumer nor serves the public interest.

OneComm is even more concerned about the application of Section 225 (Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals) and Section 226 (Telephone Operator Consumer Services Improvement Act ("TOCSIA")) to traditional SMR providers.

A. The Commission Should Forbear From Applying TRS Provisions to Certain SMR Providers

OneComm supports the mandate of the Americans with Disabilities Act of 1990 ("ADA"), which ensures that individuals with hearing and speech disabilities have access to the telephone through interstate and intrastate telecommunications relay services ("TRS").¹⁴ Under the Commission's rules, common carriers have a number of alternative methods for providing these services, including contracting out the service to other vendors. OneComm believes that while the ability to select third-parties to

¹⁴ TRS facilities are equipped with specialized equipment and staffed by communications assistants who relay conversations between people who use text telephones and people who use traditional telephones. See Telecommunications Relay Services and the Americans with Disabilities Act of 1990, Third Report and Order, 8 FCC Rcd 5300, n.1 (1993).

provide TRS service reduces somewhat the need for forbearance of Section 225 for all SMR providers, it does not eliminate that need.

OneComm firmly believes that a cost/benefit analysis fails to support application of Section 225 to traditional SMR providers, particularly those primarily engaged in dispatch services. As a practical matter, there would appear to be little, if any, demand for TRS service by customers of traditional SMR providers. The Commission thus far has applied Section 225 requirements only to carriers providing voice telephone transmission.¹⁵ While dispatch services offer voice communications, those communications are different in nature from the voice communications subject to Section 225. Specifically, the voice communications offered by dispatch services are communications from one person -- the dispatcher -- simultaneously to many persons. It is highly unlikely that a need for TRS would arise under these narrow circumstances. In fact, OneComm has never had a request for such services from any of its dispatch customers.

Given the apparent lack of demand by traditional SMR dispatch customers, OneComm believes that the costs of providing TRS service, even if offered by a third party,

¹⁵ The Commission has not required, for example, satellite services not engaged in voice transmission and one-way paging services to offer TRS. See NPRM at ¶ 17, n.39.

will be sufficient enough to offset any benefit that the service might provide. Commission forbearance from applying Section 225 to this narrowly-defined group of SMR providers is therefore warranted.

OneComm also questions whether traditional SMR providers should be required to contribute to the TRS fund. Admittedly, the amount of any contribution to the fund, based upon a provider's gross interstate revenues, would be small. SMR providers have never been required to differentiate between interstate and intrastate revenues, however. The administrative costs required to determine the proper fund contribution will far outstrip the amount of any contribution.¹⁶ OneComm agrees with the Commission's objective of spreading the costs of providing TRS as widely and fairly as possible. But this benefit is outweighed by the significant administrative costs that smaller SMR providers must incur in order to comply with the payment requirements.

B. The Commission Should Forbear From Applying TOCSIA Requirements to Certain SMR Providers

OneComm believes that the Telephone Operator Consumer Services Improvement Act ("TOCSIA") has helped stem

¹⁶ Contributors to the fund must comply with reporting and filing obligations including conforming their accounts to the format NECA employs for determining interstate revenues. See NPRM at ¶ 19.

the unreasonably high rates and anticompetitive practices of operator service providers ("OSPs") and aggregators. The regulatory regime crafted by the Commission in implementing TOCSIA imposed regulatory burdens on both OSPs and aggregators. The most significant burden placed on OSPs was an informational tariff filing requirement. In addition, OSPs are subjected to identification, disclosure and billing requirements.¹⁷

OneComm is not aware of any SMR operators that today offer OSP or aggregator services. In the future, however, wide-area SMR providers, and perhaps conventional SMR providers, may wish to offer OSP or aggregator services. The services could be offered, for example, by SMR equipment placed in rental cars or taxicabs.¹⁸

The costs of applying Section 226 to SMR providers and services, however -- particularly traditional SMR operators -- outweigh any benefits that may be attributed to application of the TOCSIA rules. SMR providers have never

17 See Policies and Rules Concerning Operator Service Providers, Report and Order, 6 FCC Rcd 2744 (1991); Order on Reconsideration, 7 FCC Rcd (1992).

18 OneComm agrees with GTE's position set forth in another proceeding that Congress intended that TOCSIA apply only to hotels, universities and other public locations. GTE argues that airplanes, trains and rental cars are not "locations" because they are mobile. Petition for a Declaratory Ruling that GTE Airfone, GTE Railfone, and GTE Mobilnet Are Not Subject to the Telephone Operator Consumer Services Improvement Act of 1990, 8 FCC Rcd 6171, recon. pending before the Common Carrier Bureau.

been required to file tariffs. They have no in-house expertise in drafting and filing tariffs and thus would have to expend resources acquiring this expertise in order to enter the OSP business. Informational tariffs may be less detailed than those required under Section 203 of the Act, but if a company lacks any experience in the tariff filing process, it is costly to acquire it. This cost alone could be a significant deterrent to SMR operators entering new lines of business.

A number of cellular providers correctly observed in comments filed in the Second Report and Order that Congress intended TOCSIA to address competitive abuses perpetrated by wireline companies. There is no indication that mobile service offerings were contemplated by the legislation.¹⁹ More important the Commission has found all SMR providers to be nondominant. Thus, their ability to affect pricing levels in the OSP and aggregator marketplace is nonexistent. Additionally, Section 332 of the Act prohibits the Commission from forbearing from applying Section 202 of the Act, which prohibits carriers from unjustly discriminating against customers. This safeguard will ensure nondiscriminatory charges without resort to application of Section 226 to any SMR providers.

¹⁹ See Second Report and Order, at ¶ 202.

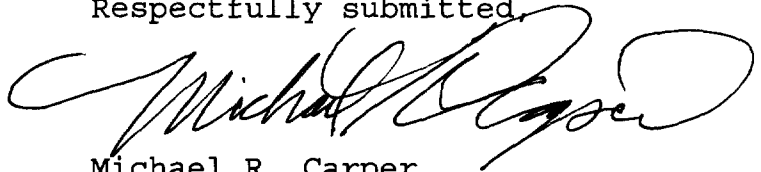
Congress developed an extensive record of wireline OSP and aggregator abuses before it adopted the requirements set forth in TOCSIA. The Commission also developed a broad record of anticompetitive and discriminatory OSP and aggregator practices in conducting rulemakings to implement TOCSIA. But SMR providers have no track record at all in these services. OneComm urges the Commission not to assume that application of Section 226 is required to temper the competitive behavior of these nondominant service providers even before they enter the market. At the least, OneComm urges the Commission to withhold a decision on whether SMR providers should be subject to Section 226. SMR providers may be deterred from entering new lines of business knowing that they know they will face the full panoply of TOCSIA requirements. If the Commission, nonetheless, decides to apply Section 226 across-the-board to CMRS providers, OneComm requests that it look favorably upon waiver requests, when and if, SMR operators decide to offer these services.

CONCLUSION

Different market conditions existing within the nondominant SMR industry justify some differential regulatory treatment of this industry as the FCC decides whether to forbear from applying various Title II provisions. OneComm supports the goals and objectives of

the new consumer protection legislation encompassed by Sections 223, 225, 226, 227 and 228 of the Act. The SMR industry was not the intended target of any of this legislation, however, and the costs of applying these sections -- particularly sections 225 and 226 -- to smaller, traditional SMR providers outweigh the benefits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael R. Carper", written in a cursive style.

Michael R. Carper
Vice President &
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CERTIFICATE OF SERVICE

I, Erin F. Osborne, do hereby certify that I have this 27th day of June, 1994, except as otherwise noted, mailed by first class United States mail, postage prepaid, copies of the foregoing document to the following:

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